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MICHAEL ROBAK, JR., CLERK

In the Supreme Court of the
United States

OCTOBER TERM, 1976

No. 76-938

FEDERAL MARITIME COMMISSION AND
UNITED STATES OF AMERICA,

Petitioners,

v.

PACIFIC MARITIME ASSOCIATION, INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIA-
TIONS, AND PORTS OF ANACORTES, BELLINGHAM,
EVERETT, GRAYS HARBOR, OLYMPIA, PORT AN-
GELES, PORTLAND AND TACOMA,

Respondents.

Response of Respondent Pacific Maritime
Association to Motion of Wolfsburger
Transport-Gesellschaft m.b.H.
for Leave to File a Brief
Amicus Curiae

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June 9, 1977

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Respondent Pacific Maritime Association ("PMA") was among those parties who did not consent to the filing of a brief amicus curiae by Wolfsburger Transport-Gesellschaft m.b.H. ("Wobtrans"). This memorandum explains why PMA's consent was withheld and suggests that the Court should deny Wobtrans' motion.

It appears from the motion that Wobtrans does not represent an interest affected by or prospectively affected by the labor agreement or the type of labor agreement at issue. The Wobtrans motion does not allege that Wobtrans is an employer of dockworkers, or that Wobtrans is a customer of employers of non-PMA dockworkers. The motion alleges that:

"Wobtrans is currently engaged in shipping vehicles to Pacific Coast ports where they are *discharged by members of the Pacific Maritime Association . . .*"
(Wobtrans Motion p. 2.) (Emphasis supplied)

Yet it is the interests of *non-PMA* employers of dockworkers which are allegedly affected by the agreement before the Court.

Wobtrans purports to speak on behalf of the interests of shippers of cargo. (Motion p. 3.) But there is no suggestion in this case that the collective bargaining agreement in question had effects or potential effects on any shipper of cargo such as Wobtrans or its parent or on the prices they pay for shipping services, whether they are customers of PMA employers or of non-PMA employers. Thus, whether or not this Court subjects the instant collective bargaining agreement to section 15 of the Shipping Act, the result will not affect Wobtrans, its corporate parent or any other shipper of cargo.

Wobtrans' concern is with a possible "spillover" effect of the rationale of the Court of Appeals' decision on labor cost assessment agreements in fact made among maritime employers only but nominally incorporated into collective bargaining contracts. (Brief, p. 7.) That issue does not exist in this case, since the Court of Appeals confined the broad rationale of its decision, exempting collective bargaining

agreements from section 15 of the Shipping Act, to agreements actually bargained between labor and management. (See PMA Brief in Opposition to Petition for Certiorari, pp. 10 and 12; 543 F.2d at 396, 409.) No party here has urged that the Court of Appeals' rationale be extended to cover inter-employer agreements tacked on to a collective bargaining contract.

The Wobtrans amicus brief, consistent with Wobtrans' interest, reargues the *Volkswagen* case (*Volkswagenwerk Aktiengesellschaft v. Federal Maritime Comm'n*, 390 U.S. 261 (1968)) and similar inter-employer labor cost assessment cases, instead of addressing the type of agreement at issue here. (Wobtrans Brief pp. 6, 12-18.) Because it seems doubtful that the Court would be aided by amicus reargument of *Volkswagen* and other labor cost assessment cases by a participant therein, it is submitted that the motion to file the amicus brief in question should be denied.

Respectfully submitted,

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Pacific Maritime Association

Of Counsel:

EDWARD D. RANSOM
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BARBARA H. BUGGERT

June 9, 1977

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Response of Respondent Pacific Maritime Association to Motion of Wolfsburger Transport-Gesellschaft m.b.H. for Leave to File a Brief Amicus Curiae upon all parties by causing three (3) copies thereof to be mailed, postage pre-paid and properly addressed, to each of the counsel of record.

Executed this 9th day of June, 1977 at San Francisco, California.

R. FREDERIC FISHER